

### **REMARKS**

Claims 1-18, 25-27, 29, 30, and 33-35 were pending in this application. No claims have been amended, added, or cancelled. Therefore, claims 1-18, 25-27, 29, 30, and 33-35 remain in this application.

Applicants concurrently submit a Declaration Under 37 C.F.R. § 1.132 with Exhibits A-D (hereinafter referred to as "*Declaration*") signed by one of the inventors, Mr. Scott Heiferman, who is also the Chief Executive Officer of the Assignee, Meetup, Inc. The content of the *Declaration* is incorporated herein in its entirety by reference.

#### **35 U.S.C. §103 Rejections**

Claims 1-18, 25-27, 29, and 33-35 stand rejected under 35 U.S.C. § 103(a) for asserted obviousness over U.S. Pat. No. 6,519,629 to Harvey et al. (hereinafter "the Harvey patent") in view of the previously-cited U.S. Pat. No. 7,532,900 to Wilson et al. (hereinafter "the Wilson patent"). Claim 30 stands rejected for asserted obviousness based upon the Harvey patent in view of the Wilson patent and further in view of the Examiner's asserted Official Notice.

Applicants herein respectfully summarize their understanding of the outstanding rejection with respect to independent claims 1 and 34. The Examiner asserts that the claimed chapter creation and selection aspects are disclosed in the Harvey patent. Specifically, the Harvey patent discloses a system for creating an online community, inviting and accepting users interested in that online community, and providing those users with miscellaneous online tools for communicating and sharing information with other users of that community. The Examiner acknowledges that the claimed aspects of receiving an in-person gathering request from the organizer and then forwarding the corresponding information to the users is not disclosed in the Harvey patent. However, the Examiner asserts that these aspects are disclosed in the Wilson patent.

Applicants note that a unifying aspect between the chapter creation/selection and receipt of an in-person gathering request and forwarding corresponding information to users is that the physical venue where the meeting is to occur must be associated with the geographic locale that is selected by the users of a chapter corresponding to the geographic locale. Applicants respectfully submit that the Examiner fails to appreciate this unifying aspect in setting forth the motivation to combine the two teachings. In other words, although

in the Wilson system, the users are meeting in-person, there is no teaching in the Wilson patent that the users (who are being sent meeting requests) are members of a chapter, let alone a chapter corresponding to a geographic locale. In fact, the Wilson system offers no aspects of associating with an actual common interest group any time prior to a meeting being set up. Instead, the Wilson system only offers the ability to set up a user profile containing interests that allows the system to match up users having similar interests that are situated in the same geographic area in a mobile context – such users have never associated themselves with an actual chapter prior to the meeting request being sent. An obviousness analysis “should be made explicit” in that there “must be some articulated reasoning with rational underpinning to support the legal conclusion of obviousness.” A rejection “on obviousness grounds cannot be sustained by mere conclusory statements.” (*KSR v. Teleflex*, 550 U.S. 398, 127 S. Ct. 1727 (2007), citing *In re Kahn*, 441 F.3d 977 (Fed Cir. 2006)). The Examiner’s asserted motivation for why someone having ordinary skill in the art would want to combine the teachings is directed to “the advantage of providing a method of organizing in-person gatherings, with the ability to increase user satisfaction by offering tools to facilitate in-person meetings.” However, the first portion of this asserted motivation fails to reconcile the aforementioned integral aspect across independent claims 1 and 34 relating to the users needing to be members of a chapter specific to a geographic locale. With respect to the second portion of the asserted motivation, as discussed below, in fact, user satisfaction would suffer if the teachings of the Harvey and Wilson patents were to be combined.

It has been held that the references used to attempt to obviate a claim must suggest the desirability and thus the obviousness of making the combination (*Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986)). The Wilson system operates in a transitory environment of mobile communications in which a user is matched up because his cell phone is within the same cell sector as another user who shares the same interests. Thus, the only people that the organizer (equated by the Examiner to the user who initiates a search for local people) can contact are those who are using their phones within the sector at the time the request is transmitted. Thus, it may be the case that 1000 other people share an interest in golf and live within that sector, but because they don’t have their cell phones on or are not physically within the same cell sector at the time the request is transmitted (because they happen to travel outside the area for a limited time), then they could not be contacted. This drawback is something that is inherent to the Examiner’s combination of teachings -- the transmission of the date/time/physical venue (as set forth in

the last step of independent claims 1 and 34) would not be transmitted to all of the members if the model of the Wilson system were applied to that of the Harvey system. Therefore, there would be no desirability by one having ordinary skill in the art to apply the Wilson model of operation to that of the Harvey system. Any such combination of teachings would prevent a person from making contact with as many other people sharing similar interests in a geographic area unless all these other people were physically present within the same cell sector *and* had their cell phones on at the time the request was transmitted. The requirement that all these conditions be met would severely limit the functionality of the system. Of note, Applicants acknowledge that a user of the Wilson system can input a set radius (as opposed to just relying on cell sectors) with respect to locating individuals sharing a similar interest that are within the defined radius; however, the requirements that all users must have their cell phones on to be identified by the system still remains. In contrast, the overall claimed invention does not have the aforementioned limitations associated with it.

It is important to note that the system in the Wilson patent is one in which one user may find multiple users who share similar interests; however, it is not the case in the Wilson system that those multiple users will necessarily find each other. In other words, the Wilson system relates to establishing a one-to-many relationship (even limited at that, as discussed above, due to every user's cell phone needing to be on and/or being in a specified cell sector), whereas the claimed invention allows for the establishment of a many-to-many relationship. Thus, there is an incongruity between the meeting aspects of the Harvey system and the Wilson system, which would not lend the teachings of the corresponding references to be combined.

The Examiner's citation to *KSR*'s holding that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results" is inapplicable to a situation in which a combination of asserted familiar elements in fact does not yield the intended result of the *overall* claimed invention, as discussed above. Applicants respectfully submit that the limitations inherent in the Wilson system would in fact result in a person having ordinary skill in the art to recognize that the Wilson patent teaches away from the intent of the claimed invention. This conclusion is consistent with *In re Dow Chem. Co.* (837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988)) in which the court held that when interpreting the patentability of a claim, the law requires that a reference be considered for all of its teachings, *including disclosure that diverges and teaches*

*away from the invention at hand* as well as disclosures that point toward and teach the invention (emphasis added).

Based on the foregoing, Applicants respectfully submit that the teachings of the Wilson patent cannot reasonably be applied to that of the Wilson patent to render the claims obvious. Notwithstanding the foregoing, when undertaking an obviousness analysis, the Examiner is also required to take into account secondary considerations relation to Applicants' invention. *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966) The Court of Appeals for the Federal Circuit stated in *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538, 218 USPQ 871, 879 (Fed. Cir. 1983) that "evidence rising out of the so-called 'secondary considerations', such as commercial success, must always when present be considered en route to a determination of obviousness" (*See also KSR v. Teleflex*, 550 U.S. 398).

In §2 of the *Declaration*, Mr. Heiferman sets forth the purpose of the claimed invention, and touches upon its diverse and global reach, social impact, and role in expanding social networking:

The claimed invention, as embodied by the currently pending independent claims, has been successfully commercialized by Meetup to create one of the world's largest network of local groups. The claimed invention is conducive to bringing together individuals who share similar interests in similar geographic areas. A third-party description of the claimed invention is set forth in the articles of Exhibit A. Meetup was founded with the mission of revitalizing local community and helping people around the world self-organize. Since its inception, Meetup has successfully commercialized the claimed invention to enable individuals to organize a local group or find an existing local group to engage in real world face-to-face interaction. The claimed invention covers a wide range of diverse interests and geographic areas, as is demonstrated by the various topics on the site's front page, <http://www.meetup.com>. The claimed invention facilitates groups such as the Manhattan Boston Terrier Owners Group, the Hyderabad, India Outdoor Adventure Club, the Vancouver, Canada Klingon Language Group, which are discussed in the articles of Exhibit B. The claimed invention was recognized for its grassroots organization capabilities, as evidenced by it allowing about 190,000 individuals to get together with fellow supporters months prior to the 2004 Iowa caucuses (*See Newsweek* article of Exhibit C). The claimed invention also complements other social networking technology, such as MySpace, Facebook, and Twitter, but expands on their on-line aspects by providing sophisticated tools for creating and managing off-line, real-life, in-person interaction between individuals. For example, as recently described in a *Fortune* article of Exhibit C, Meetup has developed a technology that enables any third-party website to embed a widget that can be used by visitors to that third-party website to self-organize and create events, thereby further expanding the social networking spectrum.

In §3 of the *Declaration*, Mr. Heiferman details quantitative data relating to membership, geographic locales, chapters, and in-person gatherings, thereby evidencing the broad-reaching commercial scope of the claimed invention:

The claimed invention, as embodied by the currently pending independent claims, was first commercialized in June of 2002 as a website publicly accessible at <http://www.meetup.com>. The website has around 16 million visitors per month and over 7.5 million members. At present, the website offers groups in around 6,200 cities and members in around 49,000 cities (equated to "geographic locales" in the claimed invention). There are around 80,000 groups (equated to "chapters" in the claimed invention) that cover the aforementioned topics with respect to one or more geographic locales. There are around 240,000 monthly meet-ups (equated to "in-person gatherings" in the claimed invention) with around 2.5 million RSVPs placed each month by members for corresponding meet-ups. The claimed invention provides for revenue streams derived from various sponsorship opportunities associated with the Meetup.com website or the meetups. Meetup, Inc., operating the claimed invention, as commercially embodied, currently employs approximately 65 staff members.

In §4 of the *Declaration*, Mr. Heiferman discusses the extensive industry recognition and investment interest attributed to the claimed invention:

The claimed invention, as embodied by the currently pending independent claims, has been recognized by the industry via various awards attributed to it (*See Exhibit D*). For example, in 2004, the claimed invention was recognized with the Webby Award in the area of web politics. Specifically, the claimed invention was recognized for its ability to efficiently organize political gatherings or other social awareness events. Also in 2004, Scott Heiferman, CEO, co-founder of Meetup, Inc., and co-inventor of the claimed invention was awarded the MIT Innovator of the Year award with respect to the claimed invention. The claimed invention was listed on *Time* magazine's list of the "50 Best Websites of 2004." The current and future potential of the claimed invention has been recognized by preeminent venture capital investors and leading internet companies such as eBay.com who have purchased significant equity interests in Meetup, Inc. in 2006 (*See Bloomberg Businessweek* article of Exhibit D).

The aforementioned statements (with accompanying Exhibits A-D) made in the *Declaration* should be evidence of not only the commercial success enjoyed by a service implementing the claimed invention, but also industry-recognized existing and future potential of the claimed invention, which should therefore weigh in favor of overcoming any obviousness rejections.

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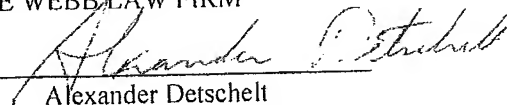
**CONCLUSION**

Based on the foregoing remarks, reconsideration of the rejections and allowance of pending claims 1-18, 25-27, 29, 30, and 33-35 are respectfully requested.

Respectfully submitted,

THE WEBBLAW FIRM

By



Alexander Detschelt  
Registration No. 50,261  
Attorney for Applicants  
700 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
Telephone: 412-471-8815  
Facsimile: 412-471-4094  
E-mail: [webblaw@webblaw.com](mailto:webblaw@webblaw.com)